IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3364 of 2004
With
SPECIAL CIVIL APPLICATION NO.4163 TO 4185 & 4670 OF 2004

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANTIFRICTION BEARINGS CORPN LTD - Petitioner(s)

Versus

ASSISTANT COMMISSIONER OF LABOUR MULTISTOREYED BLDG & 1 - Respondent(s)

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Appearance :
MR VAUN K. PATEL for Petitioners
MR M.R. MENGEDEY, AGP, for State-competent authority

Mr. Ramnandan Singh for respondent-workman

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 22/12/2005

COMMON ORAL JUDGMENT

1.0 These petitions were listed before this Court on 15th December 2005. On that day since Mr. Ramnandan Singh appearing for the respondents-workmen had filed sick note, the matters were adjourned to 19th December 2005. It was also recorded in the order that if Mr. Singh would not be able to

attend the matter on the next date, he may make alternative arrangement, as the matter will be taken up for hearing on that day. On 19th December 2005 the matter was adjourned to 22nd December 2005 and today Mr. Singh has filed Sick Note. He has not made any alternative arrangement and on his behalf a request was made to adjourn the matter which is nothing but an attempt to prolong the matter. Since these are old matters the same are taken up for hearing.

2.0 A common question of law and facts and law are involved in these petitions and therefore they are being decided by the present common judgement. The challenge in these petitions are against the orders passed by the respondent no.1 whereby the respondent no.1 made references to the Labour Court, Bharuch in each case in pursuance of the disputes raised by each respondent..

3.0 The short facts of the case are that the petitioner is an engineering unit engaged in manufacturing and marketing of bearings. The respondents workmen were working with petitioner company. Due to various factors the business of the petitioner has declined and therefore the petitioner thought of reducing the excess manpower. However in order to avoid retrenchment in accordance with law and in accordance with the principle of last-come-first-go, the petitioner thought of offering handsome separation package to those who

were voluntarily willing to resign the job and leave the services. It was introduced only with a view to avoid compulsory retrenchment. Accordingly the petitioner floated a scheme of voluntary retirement in or about January 2003, under which it offered to pay compensation at the rate of 45 days wages for each completed year of service and payment of other retiral benefits such as gratuity, etc, if the employee wanted to leave the services voluntarily.

3.1 The respondents workmen opted for voluntary retirement by submitting separate resignation and signing individual settlement. The resignations of the respondents were accepted and they were paid all the dues and relieved the respondents from service. All the payments have been accepted by the respondents. After voluntarily resigning and accepting benefits of voluntary retirement on payment of ex-gratia amount, no dispute whatsoever survived, but the respondents raised disputes before the respondent no.1 authority for reinstatement in service with full back wages.

3.2 The petitioner filed reply before the authority pointing out the fact that the respondents had voluntarily resigned from the service under voluntary retirement scheme and also narrated the details of the payment made and accepted by the respondents without any protest. It was also stated in the reply that in view of the resignations and acceptance of the entire dues, the

relationship of employer-employee came an end. In spite of this the respondent authority referred the dispute to the Labour Court for adjudication. The said orders are challenged in these petitions.

4.0 Mr. Varun Patel for the petitioner submitted that the respondent no.1 has exceeded his jurisdiction in making the reference in purported exercise of power under section 10 of the Act. He submitted that the matters which are covered by settlement cannot form subject matter of industrial dispute. According to him, there is a 2(p) settlement, resignations were submitted voluntarily and the respondents have accepted the benefits of retirement and therefore being covered by the settlement there cannot be an industrial dispute. He submitted that in view of the resignations and acceptance of payment, the relationship of employer-employee came to an end and the respondents were not “workmen” as per the definition of section 2(s) of the Act, as a result of which they are not entitled to raise any dispute. He, therefore, submitted that the impugned orders are illegal and bad in law and require to be quashed and set aside.

5.0 Though served, no reply has been filed by the respondents.

6.0 As a result of the hearing and perusal of the record, it is found that the respondents have taken voluntary retirement. They have accepted the

gratuity amount after filling up the form No.I. All other retirement benefits were also accepted. Amounts of Provident Fund have also been withdrawn. While withdrawing these amounts it is stated that such amounts have been withdrawn in pursuance of their resignation which is evident from the documents produced on record. Admittedly the respondents have accepted the 2(p) settlement which has become final. The settlement was arrived at with the free consent of the respondents. The documents pertaining to withdrawal of gratuity, provident fund, the receipts thereof are produced on record. Though the matters have been admitted way back in March 2004, no reply has been filed till this date disputing those documents. Therefore the case of the petitioner is required to be accepted.

7.0 The law on the subject is also well settled. In the case of A.K. Bindal Vs. UOI, reported in (2003)5 SCC 163, it is held that option under Voluntary Retirement Scheme having been accepted and benefits thereof taken by majority of the employees, thereby leaving all their rights, they cannot reagitate pay revision.

7.1 In the case of Everstee Vs. District Labour Officer, reported in 1999-II LLJ 851 it is held that the employees having voluntarily retired and having been paid all benefits thereunder could not be treated as workman under section 2(s) of the I.D. Act.

7.2 Same view has been taken in the case of Purandaran and others Vs. Hindustan Lever Ltd., reported in 2001-II LLJ 52.

7.3 Similar view has been taken by a Division Bench of this Court by decision dated 6th December 2001 rendered in Letters Patent Appeal No.852 of 2000 and other allied matters.

7.4 The aforesaid decisions have been been filed by this Court in its decision dated 30th June 2005 rendered in Special Civil Application No.773 of 2005 and No.821 of 2005.

8.0 Thus, it is settled law that definition of “workman” as per section 2(s) of the Act only includes persons who are presently employed, or who have been dismissed, discharged or retrenched from the service of the employer. Dismissal, discharge or retrenchment is is an act of the employer, whereas terminating the contract of service by way of resignation by the workman is his own act. The respondents having voluntarily tendered their resignation pursuant to a scheme for voluntary retirement, the resignation having been accepted by the petitioner and all the benefits arising out of such resignation have been paid by the company and received by the respondents, they cannot be treated as workman under section 2(s) of the Act. The respondent

authority, therefore, was not right in referring the dispute for adjudication.

9.0 For the foregoing reasons, I am of the view that the competent authority has committed an error in referring the dispute for adjudication. These petitions are, therefore, allowed. The impugned orders in these petitions are quashed and set aside. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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